IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.1337 of 2008

1. **QUAISUL HAQUE .**
2. **TAJUL HAQUE.**
   BOTH SONS OF LATE ABDUL HAQUE.
3. **NASRA KHATOON, WIFE OF LATE FAIZUL HAQUE.**
4. **SURAIYA KHATOON, WIFE OF LATE ABDUL HAQUE.**
   ALL RESIDENTS OF MOHALLA-NEW COLONY MATKURIYA ROAD, WASEPUR, P.S. BANK MORE, DISTRICT-DHANBAD(JHARKHAND).
   ……PETITIONERS.

Versus

1. **THE STATE OF BIHAR.**
2. **NASRIN FARHAT, DAUGHTER OF LATE SYED IZHARUL HAQUE, RESIDENT OF VILLAGE-MOUZA DUMRAMA, P.S. ASTHAMA, DISTRICT-NALANDA.**
   ……OPPOSITE PARTIES.

For the Petitioners : Mr. Ashutosh Kumar, Advocate.
For the State : Mr. Jharkhandi Upadhyay, A.P.P.
For O.P. No.2 : Mr. S. Rizwanul Haque, Advocate.

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3. 25.11.2008. The four petitioners herein who have been arrayed as accused in Complaint Case No.1164(C) of 2007 faced with a situation of the sword of Damocles in the form of being subjected to double jeopardy, hanging over their head have prayed for the quashing of the order dated 22.11.2007 passed therein by Sri Achchyutanand Upadhaya, the learned Sub-Divisional Judicial Magistrate, Nalanda at Biharsharif, whereby he has taken cognizance of offences punishabl4e under Sections 498-A, 379 I.P.C.

The complainant, one Nasrin Farhat, impleaded herein as O.P. No.2, filed the aforesaid complaint on 11.9.2007 inter alia stating that she was married to petitioner no.1 on 11.4.1999 according to the

religious rites of Hanafi School of Muslim law and the initial period following the marriage was spent in bliss and cordiality with the in-laws but later on they started demanding dowry. It is alleged that the accused persons started assaulting and subjecting the complainant to torture and cruelty to pressurize her to bring money from her mother's house. Various instances of assault and cruelty have been divulged. It is further alleged that notwithstanding some money being transacted the situation and relationship did not improve and she was eventually ousted from the matrimonial home.

It has been submitted that the instant complaint had been filed surreptitiously suppressing the material fact that exactly on similar grounds the complainant had filed a case at Dhanbad within the State of Jharkhand being Dhanbad(Bank More) P.S. Case No.399 of 2007 dated 28.5.2007 under Sections 498-A, 323 I.P.C. as also Sections 3/4 of the Dowry Prohibition Act. In this connection, it has been submitted that except for the difference in the format and the length of allegations, the allegations in both the cases are substantially the same. It was further sought to be submitted that had a mention regarding the filing of the police case at Dhanbad been made in the complaint petition or in the statement of the complainant on S.A. the instant complaint case would be governed by the provisions of Section 210(3) Cr.P.C. whereunder the instant case would have been kept in abeyance awaiting the report of the police investigation in the police case at Dhanbad.

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Though, the complainant has put in an appearance, no show

cause or counter affidavit has been filed on her behalf. Even her learned counsel was not able to satisfy me on the necessity of filing two separate cases at two different places on the same set of facts and that too by suppressing the fact of having earlier filed a case at Dhanbad in the latter case at Biharsharif.

Even Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once and Section 210 Cr.P.C. provides for the procedure where a complaint case and a police case are filed in respect of the same offence.

Since the complainant does not appear to have approached Biharsharif Court with clean hands by suppressing the material fact of her having earlier filed a police case at Dhanbad in respect of the same allegations, the prosecution of the petitioners in the instant case appears to be an abuse of the process of the court. In that view of the matter the impugned order taking cognizance against the petitioners is hereby quashed and the application is allowed.

(Abhijit Sinha,J)

P.S.

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